

April 16, 1997  
L-97-16

**TO** : Peter A. Larson  
Chief Financial Officer

**FROM** : Catherine C. Cook  
General Counsel

**SUBJECT** : Compensation - Fringe Benefits - Stock

This is in response to your memorandum of February 20, 1997, in which you inquire as to the treatment under the Railroad Retirement Act (RRA) and Railroad Unemployment Insurance Act (RUIA) of certain awards paid by an employer to its employees for perfect attendance and superior performance.

Under these programs an employee who, in the discretion of the employer, meets certain criteria receives an award denominated in cash but paid in stock of the employer company.

Section 1(h)(1) of the RRA defines the term Acompensation@ as any form of money remuneration paid to an individual for services rendered as an employee to one or more employers. A similar definition is found in section 1(i)(1) of the RUIA and section 3231(e)(1) of the Railroad Retirement Tax Act (RRTA).

Notwithstanding the reference to Amoney@ remuneration in section 3231 of the RRTA, the Secretary of the Treasury has promulgated section 31.3231(e)-1(a) as a regulation under the RRTA which defines compensation as:

Definition - (1) The term compensation has the same meaning as the term wages in section 3121(a), determined without regard to section 3121(b)(9), except as specifically limited by the Railroad Retirement Tax Act (chapter 22 of the Internal Revenue Code) or regulation. The Commissioner may provide any additional guidance that may be necessary or appropriate in applying the definitions of sections 3121(a) and 3231(e).

In promulgating this regulation the Secretary of the Treasury intended to conform as much as possible the definition of wages under Federal Insurance Contributions Act (FICA) to the definition of wages under the RRTA, including FICA's treatment

of remuneration for services paid in other than case as Awages@ under that statute. See 59 Fed. Reg. 66188 (1994). The Treasury regulation defining Awages@ is much broader than Amoney@ remuneration and includes, for example, goods, lodging, food, clothing, securities, etc. Cf. 26 CFR 31.3121(a)-1(e).

It does not appear that under the RRA or RUIA or the regulations thereunder the above-described payments would squarely meet the definition of compensation<sup>1</sup>. However, under the Treasury regulation, cited above, such payments would appear to be considered compensation under the RRTA, at the very least with respect to payments made after the effective date of the regulation, December 23, 1994. We have construed the definition of compensation in the RRA and RUIA in such a way as to conform the treatment of payments under those acts to the Railroad Retirement Tax Act.

Since you have been co-ordinating the audit of this employer with the IRS, you may wish to submit the issues raised herein to that agency.

---

<sup>1</sup>The employer concedes that if it were agreed upon in advance that the performance of certain services, e.g., perfect attendance, would result in an award denominated in dollars but paid in stock whose fair market value equaled the denominated amount, then the fair market value of the stock would be considered compensation. However, the employer argues that the awards in this case were after the fact and not agreed upon in advance.